

## Judicial Procedures Survey for the Honorable M. Elaine Hammond

Many years ago, well before the implementation of ECF filings, the Bench-Bar Liaison Committee generated a survey of the Northern District Bankruptcy Judges. The questions focused on various practice procedures utilized by the judges and the questions and responses were printed out in a black notebook. The following is an effort to update and replace the old notebook. We have surveyed the judges in response to a series of questions divided up into different topics. Each judge's responses to the survey are posted online in the section specific to that judge. In the event of any conflict between the judge's responses to the survey and his or her posted procedures and practice, the posted procedures and practice, as well as the Local Rules will control.

Please direct questions and comments to: <http://www.canb.uscourts.gov/procedures/dist/bench-bar-liaison-committee-roster>

### I. CALENDAR HEARINGS

Questions	Response
1. Does the judge schedule particular types of matters for certain days or times?	Yes. <a href="http://www.canb.uscourts.gov/procedures/judge-hammonds-weekly-calendar-schedule">http://www.canb.uscourts.gov/procedures/judge-hammonds-weekly-calendar-schedule</a> (see below)
2. Does the judge allow hearings to be set by parties and attorneys using a "self-calendaring" system (in which a range of dates are available for selection without having a date personally from the courtroom deputy)?	Yes. Types of proceedings that may be set using the open calendar procedure: <ul style="list-style-type: none"><li>• Motions in the main case in chapter 13 cases: on designated Thursdays at 9:30 a.m.</li><li>• Motions in the main case in Chapter 7 and 11 cases: on designated Thursdays at 10:30 a.m.</li><li>• Motions in adversary proceedings: on designated Mondays at 11:00 a.m.</li><li>• Motions for relief from stay: on designated Fridays at 10:00 a.m.</li><li>• All matters relating to chapter 13 cases requiring the presence of the chapter 13 trustee: on designated Tuesdays at 10:00 a.m. when chapter 13 confirmation hearings take place. These confirmation hearing dates will be announced in advance on a quarterly basis and posted in Judge Hammond's calendar section on the Court's website.</li></ul>
3. May parties and attorney contact the	Yes

	judge's staff to request the Court to specially set a date and time for a longer hearing?	
4.	Where are the daily calendars of the judge's hearings posted?	On website at <a href="http://www.canb.uscourts.gov/judges/hammond/calendar">http://www.canb.uscourts.gov/judges/hammond/calendar</a> , and posted in lobby of 2 <sup>nd</sup> floor

## II. TENTATIVE RULINGS

Questions		Response
1.	Does the judge issue tentative rulings?	Rarely
2.	How are the tentative rulings made known to the parties?	Email to parties, if possible, or a printed copy distributed at start of the hearing.
3.	If the tentative rulings are posted on the Court's website, does the judge update tentative rulings?	N/A
4.	If the judge issues tentative rulings in advance of the hearing, may the parties submit without an appearance?	N/A
5.	If the parties may submit on the Court's tentative ruling without an appearance, must they notify the calendar clerk before the hearing that they are doing so, or may they simply not appear without notice?	N/A

### III. EMERGENCY MATTERS AND APPLICATIONS FOR ORDERS SHORTENING TIME FOR HEARING

Questions	Response
1. Does the judge allow hearings on an emergency basis (less than 48 hours' notice)?	Yes
2. If so, who is the point of contact for arranging for consideration of emergency motions?	Ruby Bautista (510-879-3529 / <a href="mailto:ruby_bautista@canb.uscourts.gov">ruby_bautista@canb.uscourts.gov</a> ) or law clerk, Steven Nunes (510-879-3528 / <a href="mailto:steven_nunes@canb.uscourts.gov">steven_nunes@canb.uscourts.gov</a> )  Judge requests that moving party contact chambers or courtroom deputy to provide notice that a motion for order shortening time has been filed.
3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	No
4. For emergency motions or hearings on shortened time, does the judge require delivery of the judge's copy of the moving or responding papers to chambers?	No
5. Does the judge act on emergency motions without requiring notice to any party whatsoever?	May in appropriate circumstances
6. Does the judge require declarants to be present in court on emergency motions?	No

7.	Does the judge require some notice to another party before granting an application for order shortening time for hearing?	Depends on matter. If identifiable opposing party, require declaration consistent with BLR 9006-1.
8.	Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?	Yes
9.	Does the judge routinely grant orders shortening time for hearings on the following matters?  (a) Relief from stay motion in residential unlawful detainer cases  (b) Chapter 11 first day motions, including cash collateral hearings  (c) Sales of property  (d) Applications for temporary restraining orders  (e) Other matters (please specify)	(a) These are rarely requested but have been granted in some cases. (b) Yes (c) If appropriate (d) Yes (e)

#### IV. HEARINGS & TELEPHONIC APPEARANCES

Questions		Response
1.	Are telephonic appearances generally allowed by the judge?	Yes

2.	What matters, if any, will the judge <b>not</b> allow telephonic appearances?  (a) Disclosure Statement & Confirmation Hearings  (b) Evidentiary Hearings  (c) Other matters (please specify)	(a) Not allowed  (b) Not allowed  (c)
3.	Does the judge consider priority requests from counsel at the time of calendar call?	Yes
4.	Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?	Begins relief from stay calendar with a request for stipulations. Judge is willing to call stipulations and uncontested matters first on other calendars if the parties notify the courtroom deputy at check in.
5.	Does the judge sign orders on the bench at the conclusion of a hearing?	Occasionally. Judge prefers to sign through ECF.

## V. PROCESSING ORDERS

Questions		Response
1.	Does the court require an order to be approved as to form prior to being submitted?	If requested by opposing counsel.
2.	If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?	Yes

3.	<p>What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties?</p> <p>(a) File a formal objection</p> <p>(b) letter to the judge setting forth the objection</p> <p>(c) Contact the judge's clerk to set up a conference call</p> <p>(d) Either procedure (please specify)</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d) Prefer (b) or (c). Request parties review electronic recording if available on docket first.</p>
4.	<p>If a large number of parties are entitled to receive notice of entry of an order signed by the judge, what procedure does the judge use to accomplish service of notice of entry of that order?</p>	<p>-Service by ECF only; will provide service by mail on parties heard on matter</p> <p>-Party obtaining order responsible for service on all remaining parties by service of notice of entry of order</p>
5.	<p>What are the judge's procedures when parties cannot agree on the form of the order?</p>	<p>-Telephonic hearing to determine dispute</p>
6.	<p>How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?</p>	<p>5-10 days; depending on whether order required lodging</p>
7.	<p>Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?</p>	<p>Attorneys and parties may communicate with judicial assistant, Raenna Rorabeck, at 510-879-3525 or law clerk, Steven Nunes, at 510-879-3528.</p>

## **VI. JUDGE'S COPIES OF FILED DOCUMENTS**

<b>Questions</b>	<b>Response</b>
1. Does the court require courtesy copies of pleadings filed in the case?	Yes, for all motions for which a hearing is scheduled where documents exceed 10 pages, excluding the proof of service. Please note, this may be revised in the future.
2. Are there exceptions to this rule, e.g. relief from stay motions?	No

## **VII. COMMUNICATIONS WITH JUDGE'S STAFF**

<b>Questions</b>	<b>Response</b>
1. Does the judge allow attorneys and proper parties to communicate with the judge's courtroom deputy regarding: (check where appropriate)  (a) Scheduling matters  (b) Status of orders  (c) Other matters (please describe)	(a) Yes  (b) Communicate with judicial assistant, Raenna Rorabeck, at 510-879-3525  (c)
2. Does the judge permit attorneys and proper parties to communicate with the judge's law clerk regarding: (check where appropriate)  (a) Scheduling matters	(a) Yes  (b) Communicate with judicial assistant, Raenna Rorabeck, at 510-879-3525 or law clerk, Steven Nunes, at 510-879-3528  (c)

(b) Status of orders	
(c) Other matters (please describe)	

## VIII. STATUS CONFERENCES

Questions	Response
<b>Chapter 11 Cases:</b>	
1. Are status conferences held in Chapter 11 cases?	Yes
2. Are status conference statements required?	Initial status conference statements required; subsequent statements appreciated.
3. Are the required contents of the statement set forth in the judge's order setting the status conference?	Yes
4. Is the debtor or debtor's responsible individual required to appear at the status conference?	Yes
5. Will the judge set plan filing deadlines at the status conference?	Yes, although rarely at initial status conference.
6. Can the status conference be continued? If so, can what is the preferred method for doing so?	Yes. If a debtor seeks to continue the status conference prior to the hearing, an application is required stating the basis upon which continuance is requested.
7. Does the judge impose sanctions for failure to file the status conference report?	No
8. Is a scheduling order prepared after a status conference when the judge sets a plan and disclosure statement deadline	Yes, the court prepares the scheduling order.



	and if so, who prepares the order?	
<b>Adversary Proceedings:</b>		
9.	Are status conference statements required? If so, when are they due?	Appreciated but not required. Helpful if received 7 days prior to hearing.
10.	Are the required contents of the statement set forth in the judge's order setting the status conference?	No
11.	Does the judge impose sanctions for failure to file the status conference statement?	No
12.	Is the represented party required to appear at the status conference?	No
13.	Will the judge set a trial date at the status conference?	Yes, although rarely at initial status conference.
14.	Does the judge require the parties to file a discovery plan?	No
15.	Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?	Yes, stipulation or application stating basis upon which a continuance is requested.

## **IX. RELIEF FROM STAY MOTIONS**

<b>Questions</b>		<b>Response</b>
1.	Are appearances required if there is a statement of non-opposition from the debtor and trustee?	Appearances are required from the moving party.
2.	Are telephonic appearances allowed at relief from stay matters?	Yes
3.	Will the court hear testimony at a final hearing?	Yes, depending on the circumstances.

4.	Does the judge grant ex parte relief from stay in unlawful detainer cases?	No
5.	Does the judge have special procedures for handling residential relief from stay motions? What are they?	No
6.	<p>Does the judge permit shortened notice on motions for relief from stay where there is proof of any of the following:</p> <p>(a) A prior unlawful detainer judgment</p> <p>(b) A prior adequate protection order</p> <p>(c) Multiple bankruptcy filings</p> <p>(d) Other conduct constituting bad faith</p> <p>(e) A Chapter 13 confirmation hearing is already scheduled</p> <p>(f) None of the above</p> <p>(g) Other (please specify)</p>	<p>(a) Shortened notice must be requested as set forth in BLR 9006-1. Judge will consider shortened time on basis of (a)-(d).</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>
7.	Does the judge hear relief from stay motions on shortened notice in <b>non-residential</b> unlawful detainer cases?	Judge will consider requests to shorten notice on case-by-case basis.
8.	Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?	Yes, when set for evidentiary hearing.

9.	Upon an appropriate evidentiary showing, will the judge award prospective relief from stay effective for 180 days in future bankruptcy cases filed by the debtor?	Yes
10.	Does the judge grant requests for retroactive annulment of the automatic stay?	Yes

## **X. MOTION PRACTICE**

<b>Questions</b>		<b>Response</b>
1.	When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	Not generally required.
2.	When does the judge require declarants to be present in court on regularly scheduled motions?	Not generally required.
3.	Does the judge require written evidentiary objections to be made in a separate document?	See Civil Local Rules.
4.	Can a party continue a motion on its own?	Parties may contact courtroom deputy to request continuance; in some cases, court approval may be required.
5.	Can a hearing on a motion be continued by stipulation?	Yes
6.	Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	Not yet.
7.	If not, what notice does the judge require?	Notice by email or fax, if possible, to opposing party.

## **XI. PROOF OF SERVICE REQUIREMENTS**

<b>Questions</b>	<b>Response</b>
1. Does the judge deny motions for failure of the moving party to prepare and timely file proof of service which complies with all of the requirements of Local Bankruptcy Rule 9013-3?	Yes
2. Does the judge continue motions to allow movant to provide proof of service?	Yes
3. Does the judge deny motions for failure to identify on the proof of service the capacity in which parties have been served as required by the Local Bankruptcy Rule 9013-3(b)	No

## **XII. CONTINUANCES**

<b>Questions</b>	<b>Response</b>
1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	Yes, by application or by joint telephone call to courtroom deputy.
2. Does the judge permit stipulated or unopposed oral requests for continuances?	Yes
3. Does the judge permit continuances of trial dates by stipulation of the parties?	No
4. Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?	Only with court approval.

### **XIII. DISCOVERY DISPUTES**

<b>Questions</b>	<b>Response</b>
1. Does the judge require a noticed motion in order to hear a discovery dispute?	No
2. Does the judge resolve discovery disputes by conference calls?	Yes. After parties meet and confer they may contact courtroom deputy to request a telephonic hearing. Depending on the matter, the judge may require short (3 pg.) statements of issues from each side.
3. Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?	No
4. Does the judge mandate strict compliance with the Civil Local Rule 37 (a)(1) requiring that the parties to a discovery dispute to meet and confer?	Yes
5. Does the general discovery cutoff date include disclosure of expert witnesses?	Yes, unless a separate deadline for experts is set.
6. What is the deadline for holding a hearing on a discovery dispute motion?	The judge expects a hearing on a discovery dispute motion to be promptly set at the time the motion is filed.

### **XIV. CONVERSION AND RULE 2004 MOTIONS**

<b>Questions</b>	<b>Response</b>
1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	Reasonable notice depending on circumstances and examination requested.
2. Does the judge sign orders on initial motions to convert the case from Chapter	Yes

	7 to Chapter 11, 12 or 13 or from Chapter 11 to Chapter 7 without a hearing?	
3.	Does the judge rule on motions under FRBP 2004 without a hearing?	Yes
4.	What procedures does the judge require in order for a party to object to a 2004 exam or the documents demanded as part of the 2004 exam?	File an objection. If necessary, a party may contact chambers staff to provide notice that an objection will be filed shortly.
5.	Does the judge require meet and confer efforts before a motion for protective order has been filed regarding a FRBP 2004 examination?	Yes

## **XV. CONSUMER CASES**

<b>Questions</b>		<b>Response</b>
1.	Does the judge require hearings on reaffirmation agreements if the party is represented by counsel and counsel has certified that the party has the ability to meet the obligations of the agreement, despite the presumption of undue hardship?	Yes
2.	Does the judge require an adversary proceeding to avoid a junior lien?	No
3.	Does the judge require the debtor's presence at confirmation hearings?	Yes, at initial hearings.
4.	Does the judge require pre-hearing statements prior to confirmation hearings? If so, does the judge prefer a joint statement?	Yes, joint statements preferred.

5.	Does the judge require debtor's counsel to be physically present in court for relief from stay hearings?	No
6.	Does the judge allow step plans in which monthly payments are increased during plan performance?	Please see Model Plan for Oakland Division.
7.	Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	Yes
8.	At relief from stay hearings does the judge:  (a) Require waiver of the Rule 4001 stay?  (b) Allow a three strikes provision that allow automatic relief from stay if a debtor is late on three payments?	(a) No, depends on circumstances.  (b) Depends on circumstances.

## **XVI. CHAPTER 11 PROCEDURES**

<b>Questions</b>		<b>Response</b>
1.	Does the judge prefer that a party use the combined model plan and disclosure statement for individual Chapter 11 cases?	Yes, unless it would require such modifications as to be misleading or unduly burdensome.
2.	Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	Parties are welcome to use the combined model plan and disclosure statement if it is appropriate to the case.
3.	Does the judge allow less than 35 days'	Yes, 14 days' notice by ECF only for tentative approval of disclosure statement,

	notice of the hearing on a disclosure statement?	if using the combined model plan and disclosure statement.
4.	Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	Hearing required but use a fast track process for tentative approval. See above.
5.	Does the judge allow the plan and disclosure statement be combined into a single document in Chapter 11 cases that are not small business Chapter 11 cases?	Yes
6.	Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?	Yes
7.	If so, can the plan proponent do this by offer of proof or by pre-hearing submission of a declaration?	Yes
8.	Does the judge prefer the bar date for administrative claims be in the plan, in the order confirming the plan or does the court set such date by separate order?	In the order confirming the plan.

## **XVII. DEFAULT JUDGMENT**

<b>Questions</b>		<b>Response</b>
1.	Does the judge require admissible evidence in support of a motion for default judgment?	Yes
2.	Does the judge require a hearing on a motion for default judgment?	No
3.	If so, does the judge require 28 days' notice of such a hearing?	If hearing is set, 28 days' notice is required.



## **XVIII. TRIAL PROCEDURES**

<b>Questions</b>	<b>Response</b>
1. Does the judge have mandatory trial procedures in addition to requirements under the Local Bankruptcy Rules?	Yes
2. If so, how are these procedures obtained?	They are provided in the court's trial scheduling order.
3. When are trial dates set by the judge?	At status conferences.
4. Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Pre-trial conferences are held approximately 7 days before trial. Pre-trial conferences are not required in valuation hearings and other limited matters.
5. Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Direct testimony by declaration is allowed but not required.
6. If not required, under what circumstances does the judge permit direct testimony from witnesses in a party's control to be presented by declaration upon the request of the parties?	Direct testimony by declaration is allowed where credibility of witness is not directly at issue.
7. Does the judge have published procedures regarding the exchange of declarations in advance of trial?	Information is provided in the trial scheduling order.
8. Does the judge require parties to present written evidentiary objections to trial declarations and exhibits of the opposing party in advance of trial?	No

9.	Does the judge require the exchange of witness lists before trial?	Yes
10.	Does the judge require the submission of bench copies of the exhibits before trial?	Yes
11.	How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?	Judge's procedures are provided in the trial scheduling order, however, procedures are not special.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	No deadline. This has not been an issue yet.

#### **XIX. SETTLEMENT AND MEDIATION**

<b>Questions</b>		<b>Response</b>
1.	Does the judge sua sponte order parties to the court's Bankruptcy Dispute Resolution Program?	No
2.	Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters?	Yes
3.	Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?	Yes
4.	Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?	No